

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2618

Introduced by Assembly Member John A. Pérez
(Coauthors: Assembly Members Dickinson and Ting)

February 21, 2014

An act to amend Sections 36601, 36602, 36603.5, *36621*, 36622, *36624*, 36625, 36628.5, ~~and 36632~~ *36632*, *36650*, *and 36651* of, to amend and renumber Sections 36606, 36611, 36612, 36613, 36614, and 36614.5 of, and to add Sections 36609.5, 36614.6, 36614.7, and 36615.5 to, the Streets and Highways Code, relating to benefit assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, John A. Pérez. Property and business improvement areas: benefit assessments.

The California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing.

The Property and Business Improvement District Law of 1994 authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose of making improvements and promoting activities of benefit to the properties and businesses within the district, and defines various terms for purposes of the ~~aet~~ *law*.

The ~~aet~~ *law* requires a management district plan to include, among other things, the name of the proposed district, a description of the

boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

This bill would require a management district plan to additionally include, for districts that are property-based, the proportionate special benefit derived by each identified parcel, the total amount of all special benefits to be conferred on the properties located within the property-based district, the total amount of any general benefit, and a detailed engineer's report, as specified.

This bill would define the term "special benefit" for purposes of that ~~aet~~ law to mean a particular and distinct benefit over and above general benefits, as defined, conferred on real property located in a property-based district, as defined, the public at large, or other real property, as specified.

The ~~aet~~ law additionally requires the city council to adopt a resolution of formation containing, among other things, a statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments and a finding that the property or businesses within the area of the district will be benefited by the ~~improvements, maintenance,~~ *improvements* and activities funded by the assessments proposed to be levied.

This bill would require, for a property-based district, a statement of the source of funding to pay for any general benefits, a finding that the property within the district will receive a special benefit, the total amount of all special benefits to be conferred on the properties within the property-based district, and the total amount of any general benefit.

The ~~aet~~ law authorizes a city council to levy assessments on businesses or on property owners, or a combination of the 2, and requires the city council to structure the assessments on whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

This bill would require any property-based assessment to be proportional to the special benefit conferred on the assessed property, and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred, as specified.

The bill would make various conforming changes to specify that the provisions described above apply to maintenance as well as improvements and activities.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 36601 of the Streets and Highways Code
2 is amended to read:

3 36601. The Legislature finds and declares all of the following:

4 (a) Businesses located and operating within business districts
5 in some of this state's communities are economically
6 disadvantaged, are underutilized, and are unable to attract
7 customers due to inadequate facilities, services, and activities in
8 the business districts.

9 (b) It is in the public interest to promote the economic
10 revitalization and physical maintenance of the business districts
11 of its cities in order to create jobs, attract new businesses, and
12 prevent the erosion of the business districts.

13 (c) It is of particular local benefit to allow business districts to
14 fund business related improvements, maintenance, and activities
15 through the levy of assessments upon the businesses or real
16 property that receive certain benefits from those improvements.

17 (d) Assessments levied for the special benefit conferred upon
18 real property or businesses in a business district are not taxes for
19 the general benefit of a city, even if there is some incidental benefit
20 to property or persons not assessed, from the improvements,
21 maintenance, or activities that confer the special benefit.

22 (e) Property and business improvement districts formed
23 throughout this state have conferred special benefits on properties
24 and businesses within their districts and have made assessed
25 properties and businesses more useful by providing the following
26 benefits:

27 (1) Crime reduction. A study by the Rand Corporation has
28 confirmed a 12-percent reduction in the incidence of robbery and
29 an 8-percent reduction in the total incidence of violent crimes
30 within the 30 districts studied.

31 (2) Job creation.

32 (3) Business attraction.

33 (4) Business retention.

34 (5) Economic growth.

35 (6) New investments.

36 (f) With the dissolution of redevelopment agencies throughout
37 the state, property and business improvement districts have become

1 even more important tools with which to combat blight, promote
2 economic opportunities, and create a clean and safe environment.

3 (g) Since the enactment of this act, the people of California have
4 adopted Proposition 218, which amended Article XIII D of the
5 Constitution to place certain requirements and restrictions on the
6 formation of, and activities, expenditures, and assessments by
7 property-based districts. Article XIII D of the Constitution provides
8 that property-based districts may only levy assessments for special
9 benefits.

10 (h) The act amending this section is intended to provide the
11 Legislature's guidance with regard to this act, its interaction with
12 the provisions of Article XIII D of the Constitution, and the
13 determination of special benefits in property-based districts.

14 (1) The lack of legislative guidance has resulted in uncertainty
15 and inconsistent application of this act, which discourages the use
16 of assessments to fund needed improvements, maintenance, and
17 activities in property-based districts, contributing to blight and
18 other underutilization of property.

19 (2) Improvements, maintenance, or activities conferring special
20 benefits upon property to be assessed also inevitably provide
21 incidental, secondary, or collateral effects that benefit others not
22 assessed. This incidental benefit is part of a special benefit and is
23 not intended to generally benefit the public and, therefore, does
24 not constitute a general benefit under Article XIII D of the
25 Constitution.

26 (3) It is of utmost importance that property-based districts
27 created under this act have clarity regarding restrictions on
28 assessments they may levy and the proper determination of special
29 benefits. Legislative clarity with regard to this act will provide
30 districts with clear instructions and courts with legislative intent
31 regarding restrictions on property-based assessments, and the
32 manner in which special benefits should be determined.

33 SEC. 2. Section 36602 of the Streets and Highways Code is
34 amended to read:

35 36602. The purpose of this part is to supplement previously
36 enacted provisions of law that authorize cities to levy assessments
37 within a property and business improvement district, to ensure that
38 those assessments conform to all constitutional requirements and
39 are determined and assessed in accordance with the guidance set
40 forth in this act. This part does not affect or limit any other

1 provisions of law authorizing or providing for the furnishing of
2 improvements or activities or the raising of revenue for these
3 purposes.

4 SEC. 3. Section 36603.5 of the Streets and Highways Code is
5 amended to read:

6 36603.5. Any provision of this part that conflicts with any other
7 provision of law shall prevail over the other provision of law, as
8 to districts created under this part.

9 SEC. 4. Section 36606 of the Streets and Highways Code is
10 amended and renumbered to read:

11 36606.5. "Assessment" means a levy for the purpose of
12 acquiring, constructing, installing, or maintaining improvements
13 and promoting activities that will provide certain benefits to
14 properties or businesses located within a property and business
15 improvement district.

16 SEC. 5. Section 36609.5 is added to the Streets and Highways
17 Code, to read:

18 36609.5. "General benefit" means, for purposes of a
19 property-based district, any benefit provided to the public at large
20 or any person or property other than the properties located within
21 the property-based district. "General benefit" excludes all types
22 and components of a "special benefit" as defined in Section
23 36615.5.

24 SEC. 6. Section 36611 of the Streets and Highways Code is
25 amended and renumbered to read:

26 36614.5. "Property and business improvement district," or
27 "district," means a property and business improvement district
28 established pursuant to this part.

29 SEC. 7. Section 36612 of the Streets and Highways Code is
30 amended and renumbered to read:

31 36614. "Property" means real property situated within a district.

32 SEC. 8. Section 36613 of the Streets and Highways Code is
33 amended and renumbered to read:

34 36606. "Activities" means, but is not limited to, all of the
35 following that benefit businesses or real property in the district:

- 36 (a) Promotion of public events.
37 (b) Furnishing of music in any public place.
38 (c) Promotion of tourism within the district.
39 (d) Marketing and economic development, including retail
40 retention and recruitment.

1 (e) Providing security, sanitation, graffiti removal, street and
2 sidewalk cleaning, and other municipal services supplemental to
3 those normally provided by the municipality.

4 (f) Other services that benefit businesses and real property
5 located in the district.

6 SEC. 9. Section 36614 of the Streets and Highways Code is
7 amended and renumbered to read:

8 36611. "Management district plan" or "plan" means a proposal
9 as defined in Section 36622.

10 SEC. 10. Section 36614.5 of the Streets and Highways Code
11 is amended and renumbered to read:

12 36612. "Owners' association" means a private nonprofit entity
13 that is under contract with a city to administer or implement
14 ~~activities and improvements~~ *improvements, maintenance, and*
15 *activities* specified in the management district plan. An owners'
16 association may be an existing nonprofit entity or a newly formed
17 nonprofit entity. An owners' association is a private entity and
18 may not be considered a public entity for any purpose, nor may
19 its board members or staff be considered to be public officials for
20 any purpose. Notwithstanding this section, an owners' association
21 shall comply with the Ralph M. Brown Act (Chapter 9
22 (commencing with Section 54950) of Part 1 of Division 2 of Title
23 5 of the Government Code), at all times when matters within the
24 subject matter of the district are heard, discussed, or deliberated,
25 and with the California Public Records Act (Chapter 3.5
26 (commencing with Section 6250) of Division 7 of Title 1 of the
27 Government Code), for all records relating to activities of the
28 district.

29 SEC. 11. Section 36614.6 is added to the Streets and Highways
30 Code, to read:

31 36614.6. "Property-based assessment" means any assessment
32 made pursuant to this part upon property.

33 SEC. 12. Section 36614.7 is added to the Streets and Highways
34 Code, to read:

35 36614.7. "Property-based district" means any district in which
36 a city levies a property-based assessment.

37 SEC. 13. Section 36615.5 is added to the Streets and Highways
38 Code, to read:

39 36615.5. "Special benefit" means, for purposes of a
40 property-based district, a particular and distinct benefit over and

1 above general benefits conferred on real property located in a
2 property-based district, to the public at large, or to other real
3 property from the improvements, maintenance, or activities of a
4 property-based district and the incidental secondary or collateral
5 benefit from those improvements, maintenance, or activities.
6 “Special benefit” excludes general enhancement of property value
7 and any “general benefit” as defined in Section 36609.5.

8 *SEC. 14. Section 36621 of the Streets and Highways Code is*
9 *amended to read:*

10 36621. (a) Upon the submission of a written petition, signed
11 by the property or business owners in the proposed district who
12 will pay more than 50 percent of the assessments proposed to be
13 levied, the city council may initiate proceedings to form a district
14 by the adoption of a resolution expressing its intention to form a
15 district. The amount of assessment attributable to property or a
16 business owned by the same property or business owner that is in
17 excess of 40 percent of the amount of all assessments proposed to
18 be levied, shall not be included in determining whether the petition
19 is signed by property or business owners who will pay more than
20 50 percent of the total amount of assessments proposed to be levied.

21 (b) The petition of property or business owners required under
22 subdivision (a) shall include a summary of the management district
23 plan. That summary shall include all of the following:

24 (1) A map showing the boundaries of the district.

25 (2) Information specifying where the complete management
26 district plan can be obtained.

27 (3) Information specifying that the complete management district
28 plan shall be furnished upon request.

29 (c) The resolution of intention described in subdivision (a) shall
30 contain all of the following:

31 (1) A brief description of the proposed ~~activities and~~
32 ~~improvements~~; *improvements, maintenance, and activities*, the
33 amount of the proposed assessment, a statement as to whether the
34 assessment will be levied on property or businesses within the
35 district, a statement as to whether bonds will be issued, and a
36 description of the exterior boundaries of the proposed district. The
37 descriptions and statements do not need to be detailed and shall
38 be sufficient if they enable an owner to generally identify the nature
39 and extent of the ~~improvements and activities~~ *improvements*,

1 *maintenance, and activities*, and the location and extent of the
2 proposed district.

3 (2) A time and place for a public hearing on the establishment
4 of the property and business improvement district and the levy of
5 assessments, which shall be consistent with the requirements of
6 Section 36623.

7 ~~SEC. 14.~~

8 *SEC. 15.* Section 36622 of the Streets and Highways Code is
9 amended to read:

10 36622. The management district plan shall include, but is not
11 limited to, all of the following:

12 (a) If the assessment will be levied on property, a map of the
13 district in sufficient detail to locate each parcel of property and, if
14 businesses are to be assessed, each business within the district. If
15 the assessment will be levied on businesses, a map that identifies
16 the district boundaries in sufficient detail to allow a business owner
17 to reasonably determine whether a business is located within the
18 district boundaries. If the assessment will be levied on property
19 and businesses, a map of the district in sufficient detail to locate
20 each parcel of property and to allow a business owner to reasonably
21 determine whether a business is located within the district
22 boundaries.

23 (b) The name of the proposed district.

24 (c) A description of the boundaries of the district, including the
25 boundaries of benefit zones, proposed for establishment or
26 extension in a manner sufficient to identify the affected lands and
27 businesses included. The boundaries of a proposed property
28 assessment district shall not overlap with the boundaries of another
29 existing property assessment district created pursuant to this part.
30 This part does not prohibit the boundaries of a district created
31 pursuant to this part to overlap with other assessment districts
32 established pursuant to other provisions of law, including, but not
33 limited to, the Parking and Business Improvement Area Law of
34 1989 (Part 6 (commencing with Section 36500)). This part does
35 not prohibit the boundaries of a business assessment district created
36 pursuant to this part to overlap with another business assessment
37 district created pursuant to this part. This part does not prohibit
38 the boundaries of a business assessment district created pursuant
39 to this part to overlap with a property assessment district created
40 pursuant to this part.

1 (d) The improvements, maintenance, and activities proposed
2 for each year of operation of the district and the maximum cost
3 thereof. If the improvements, maintenance, and activities proposed
4 for each year of operation are the same, a description of the first
5 year's proposed improvements, maintenance, and activities and a
6 statement that the same improvements, maintenance, and activities
7 are proposed for subsequent years shall satisfy the requirements
8 of this subdivision.

9 (e) The total annual amount proposed to be expended for
10 improvements, maintenance, or activities, and debt service in each
11 year of operation of the district. If the assessment is levied on
12 businesses, this amount may be estimated based upon the
13 assessment rate. If the total annual amount proposed to be expended
14 in each year of operation of the district is not significantly different,
15 the amount proposed to be expended in the initial year and a
16 statement that a similar amount applies to subsequent years shall
17 satisfy the requirements of this subdivision.

18 (f) The proposed source or sources of financing, including the
19 proposed method and basis of levying the assessment in sufficient
20 detail to allow each property or business owner to calculate the
21 amount of the assessment to be levied against his or her property
22 or business. The plan also shall state whether bonds will be issued
23 to finance improvements.

24 (g) The time and manner of collecting the assessments.

25 (h) The specific number of years in which assessments will be
26 levied. In a new district, the maximum number of years shall be
27 five. Upon renewal, a district shall have a term not to exceed 10
28 years. Notwithstanding these limitations, a district created pursuant
29 to this part to finance capital improvements with bonds may levy
30 assessments until the maximum maturity of the bonds. The
31 management district plan may set forth specific increases in
32 assessments for each year of operation of the district.

33 (i) The proposed time for implementation and completion of
34 the management district plan.

35 (j) Any proposed rules and regulations to be applicable to the
36 district.

37 (k) (1) A list of the properties or businesses to be assessed,
38 including the assessor's parcel numbers for properties to be
39 assessed, and a statement of the method or methods by which the
40 expenses of a district will be imposed upon benefited real property

1 or businesses, in proportion to the benefit received by the property
2 or business, to defray the cost thereof, including operation and
3 maintenance.

4 (2) In a property-based district, the proportionate special benefit
5 derived by each identified parcel shall be determined in relationship
6 to the entirety of the capital cost of a public improvement, the
7 maintenance and operation expenses of a public improvement, or
8 the cost of the activities. An assessment shall not be imposed on
9 any parcel that exceeds the reasonable cost of the proportional
10 special benefit conferred on that parcel. Only special benefits are
11 assessable, and a property-based district shall separate the general
12 benefits from the special benefits conferred on a parcel. Parcels
13 within a property-based district that are owned or used by any city,
14 public agency, the State of California, or the United States shall
15 not be exempt from assessment unless the governmental entity can
16 demonstrate by clear and convincing evidence that those publicly
17 owned parcels in fact receive no special benefit.

18 (l) In a property-based district, the sum of all special benefits
19 to be provided to the properties located within the property-based
20 district.

21 (m) In a property-based district, the total amount of all special
22 benefits to be conferred on the properties in the property-based
23 district.

24 (n) In a property-based district, the total amount of any general
25 benefit.

26 (o) In a property-based district, a detailed engineer's report
27 prepared by a registered professional engineer certified by the
28 State of California supporting all assessments contemplated by the
29 management district plan.

30 (p) Any other item or matter required to be incorporated therein
31 by the city council.

32 *SEC. 16. Section 36624 of the Streets and Highways Code is*
33 *amended to read:*

34 36624. At the conclusion of the public hearing to establish the
35 district, the city council may adopt, revise, change, reduce, or
36 modify the proposed assessment or the type or types of
37 ~~improvements and activities~~ *improvements, maintenance, and*
38 *activities* to be funded with the revenues from the assessments.
39 Proposed assessments may only be revised by reducing any or all
40 of them. At the public hearing, the city council may only make

1 changes in, to, or from the boundaries of the proposed property
2 and business improvement district that will exclude territory that
3 will not benefit from the proposed ~~improvements or activities~~
4 *improvements, maintenance, and activities*. Any modifications,
5 revisions, reductions, or changes to the proposed assessment district
6 shall be reflected in the notice and map recorded pursuant to
7 Section 36627.

8 ~~SEC. 15.~~

9 *SEC. 17.* Section 36625 of the Streets and Highways Code is
10 amended to read:

11 36625. (a) If the city council, following the public hearing,
12 decides to establish a proposed property and business improvement
13 district, the city council shall adopt a resolution of formation that
14 shall include, but is not limited to, all of the following:

15 (1) A brief description of the proposed improvements,
16 maintenance, and activities, the amount of the proposed assessment,
17 a statement as to whether the assessment will be levied on property,
18 businesses, or both within the district, a statement on whether
19 bonds will be issued, and a description of the exterior boundaries
20 of the proposed district. The descriptions and statements need not
21 be detailed and shall be sufficient if they enable an owner to
22 generally identify the nature and extent of the improvements,
23 maintenance, and activities and the location and extent of the
24 proposed district.

25 (2) The number, date of adoption, and title of the resolution of
26 intention.

27 (3) The time and place where the public hearing was held
28 concerning the establishment of the district.

29 (4) A determination regarding any protests received. The city
30 shall not establish the district or levy assessments if a majority
31 protest was received.

32 (5) A statement that the properties, businesses, or properties
33 and businesses in the district established by the resolution shall be
34 subject to any amendments to this part.

35 (6) A statement that the improvements, maintenance, and
36 activities to be conferred on the district will be funded by the levy
37 of the assessments, and, for a property-based district, to the extent
38 that general benefits are provided, the funding source for those
39 general benefits. The revenue from the levy of assessments within
40 a district shall not be used to provide improvements, maintenance,

1 or activities outside the district or for any purpose other than the
2 purposes specified in the resolution of intention, as modified by
3 the city council at the hearing concerning establishment of the
4 district.

5 (7) A finding that the property or businesses within the area of
6 the property and business improvement district will be benefited
7 by the improvements, maintenance, and activities funded by the
8 proposed assessments, and, for a property-based district, that
9 property within the district will receive a special benefit.

10 (8) In a property-based district, the total amount of all special
11 benefits to be conferred on the properties within the property-based
12 district.

13 (9) In a property-based district, the sum of any general benefit.

14 (b) The adoption of the resolution of formation and, if required,
15 recordation of the notice and map pursuant to Section 36627 shall
16 constitute the levy of an assessment in each of the fiscal years
17 referred to in the management district plan.

18 ~~SEC. 16.~~

19 *SEC. 18.* Section 36628.5 of the Streets and Highways Code
20 is amended to read:

21 36628.5. The city council may levy assessments on businesses
22 or on property owners, or a combination of the two, pursuant to
23 this part. The city council shall structure the assessments in
24 whatever manner it determines corresponds with the distribution
25 of benefits from the proposed improvements, maintenance, and
26 activities, provided that any property-based assessment is
27 proportional to the special benefit conferred on the assessed
28 property.

29 ~~SEC. 17.~~

30 *SEC. 19.* Section 36632 of the Streets and Highways Code is
31 amended to read:

32 36632. (a) The assessments levied on real property pursuant
33 to this part shall be levied proportionally to the special benefit
34 conferred on the real property, and shall not exceed the reasonable
35 cost of the proportional special benefit conferred on the real
36 property. Any additional costs of providing general benefits shall
37 not be included in the amounts assessed. The city council may
38 classify properties for purposes of determining the special benefit
39 conferred on property by the improvements, maintenance, and
40 activities conferred pursuant to this part.

1 (b) Assessments levied on businesses pursuant to this part shall
2 be levied on the basis of the estimated benefit to the businesses
3 within the property and business improvement district. The city
4 council may classify businesses for purposes of determining the
5 benefit to the businesses of the improvements, maintenance, and
6 activities conferred pursuant to this part.

7 (c) Properties zoned for agricultural use, are presumed not to
8 receive special benefit from the improvements, maintenance, and
9 activities funded through these assessments, and shall not be subject
10 to any assessment pursuant to this part.

11 *SEC. 20. Section 36650 of the Streets and Highways Code is*
12 *amended to read:*

13 36650. (a) The owners' association shall cause to be prepared
14 a report for each fiscal year, except the first year, for which
15 assessments are to be levied and collected to pay the costs of the
16 ~~improvements and activities~~ *improvements, maintenance, and*
17 *activities* described in the report. The owners' association's first
18 report shall be due after the first year of operation of the district.
19 The report may propose changes, including, but not limited to, the
20 boundaries of the property and business improvement district or
21 any benefit zones within the district, the basis and method of
22 levying the assessments, and any changes in the classification of
23 property, including any categories of business, if a classification
24 is used.

25 (b) The report shall be filed with the clerk and shall refer to the
26 property and business improvement district by name, specify the
27 fiscal year to which the report applies, and, with respect to that
28 fiscal year, shall contain all of the following information:

29 (1) Any proposed changes in the boundaries of the property and
30 business improvement district or in any benefit zones or
31 classification of property or businesses within the district.

32 (2) The ~~improvements and activities~~ *improvements,*
33 *maintenance, and activities* to be provided for that fiscal year.

34 (3) An estimate of the cost of providing the ~~improvements and~~
35 ~~the activities~~ *improvements, maintenance, and activities* for that
36 fiscal year.

37 (4) The method and basis of levying the assessment in sufficient
38 detail to allow each real property or business owner, as appropriate,
39 to estimate the amount of the assessment to be levied against his
40 or her property or business for that fiscal year.

1 (5) The amount of any surplus or deficit revenues to be carried
2 over from a previous fiscal year.

3 (6) The amount of any contributions to be made from sources
4 other than assessments levied pursuant to this part.

5 (c) The city council may approve the report as filed by the
6 owners' association or may modify any particular contained in the
7 report and approve it as modified. Any modification shall be made
8 pursuant to Sections 36635 and 36636.

9 The city council shall not approve a change in the basis and
10 method of levying assessments that would impair an authorized
11 or executed contract to be paid from the revenues derived from
12 the levy of assessments, including any commitment to pay principal
13 and interest on any bonds issued on behalf of the district.

14 *SEC. 21. Section 36651 of the Streets and Highways Code is*
15 *amended to read:*

16 36651. The management district plan may, but is not required
17 to, state that an owners' association will provide the ~~improvements~~
18 ~~or activities~~ *improvements, maintenance, and activities* described
19 in the management district plan. If the management district plan
20 designates an owners' association, the city shall contract with the
21 designated nonprofit corporation to provide services.